



May 29, 2008

Tracy Egoscue, Executive Officer
Los Angeles Regional Water Quality Control Board
320 4th Street, Suite 200
Los Angeles, CA 90013

SUBJECT: Comments on NPDES No. CAS004002 – Draft Tentative Order of April 29th, 2008 (Permit)

Dear Ms. Egoscue:

The City of Ventura continues to be committed to working with the Regional Board to collaboratively create a successful new permit that will achieve our mutual water quality goals. Along with all the other jurisdictions operating under the joint permit, we have looked forward to working with your staff to finalize a plan for ensuring continued progress toward clean rivers and beaches.

However, at this time we feel that we have invested an extraordinary amount of time and resources into this effort with minimal results. We have repeatedly drawn attention to elements in the proposed permit that are contradictory, duplicative, unworkable, counter-productive and/or fiscally irresponsible. Yet the current revised draft permit reflects very few of our recommendations for practical and reasonable approaches to achieving our shared water quality goals. Unfortunately, the continued insistence on untested and unwarranted regulatory schemes over collaborative partnerships squanders an extraordinary opportunity for an environmental “win-win.” Local governments will not be able to afford the mandates, nor will they achieve the desired goals. We again appeal to you to reconsider our recommended approaches, particularly in the areas of Redevelopment Requirements and Municipal Action Levels.

The Ventura County Co-Permittees have worked together to review the Permit in a spirit of making it work, and the City of Ventura is pleased to say that we are substantially in agreement with the comments submitted on May 28, 2008 by Gerhardt Hubner, Chair of the Countywide Program, on behalf of all Co-Permittees. The City of Ventura hopes that these comments will serve as a catalyst for additional stakeholder discussions and will enable us to again produce an effective and achievable permit. In addition to the countywide comments, the City would like to take this opportunity to focus on several key issues regarding the Permit. Rather than repeat the same comments we provided in our October, 12, 2007 letter here, I have also attached this letter for your reference.

Issue: Redevelopment Requirements

The Permit discourages redevelopment and infill/smart growth projects. The following example illustrates the unintended consequences of the Permit's provisions.

If a developer proposes to make improvements to the old K-mart building on the site pictured below, they must meet the following requirements under the Draft Tentative MS4 stormwater permit:

1. Reduce the effective impervious to 5% of the site or less; and
2. Treat runoff from a 0.75" or greater storm event; and
3. Design treatment control BMPs to meet performance standards that are described as effluent limitations; and
4. Match post-development hydrologic conditions with pre-development conditions, where "pre-developed" is defined in the Permit as "native vegetation and soils that existed at the site prior to first development"; and
5. Install hydromodification controls such that the 2-year, 24-hour storm event post development peak flow matches pre-development peak flow, within 1%.



Vacant K-Mart building located in the City of Ventura

While these requirements would be quite difficult on a development on the outskirts of the City that had not been previously developed, they would be next to impossible on this, and other, urban redevelopment sites. A developer of this project would likely choose **not to** redevelop the site for an intensification and mix of uses, and instead be confined to a few cosmetic improvements and lease the building "as-is." New housing and new jobs would go elsewhere – in all likelihood to "greenfield" sites that currently are not sources of any run-off pollution issues. The result is a double environmental travesty: no improvement to existing serious sources of polluted run-off and promotion of suburban sprawl.

Like the Regional Board, the City of Ventura desires to encourage redevelopment and Smart Growth infill projects using Low Impact Development techniques. In fact, we welcome the opportunity to lead in this area. Redevelopment and infill projects, should be encouraged in the Permit for improvement of quality of life and protection of the overall watershed, especially water quality improvement.

Frankly, we continue to be astonished at the lack of interest in this issue by the staff, when many of the provisions proposed directly contradict the permit's supposed embrace of "smart growth." There is incontrovertible evidence and expert consensus that "brownfield" or "greyfield" redevelopment is environmentally superior to even the most sensitive development in currently undeveloped areas. Low-impact development is the right goal. But rules designed to minimize stormwater pollution from previously undeveloped sites should not be arbitrarily imposed on previously developed sites. That simply promotes suburban sprawl. It doesn't make economic sense. It doesn't make environmental sense. And it is a clear case of unintended environmental injustice to disadvantaged urban communities.

Recommendation:

Modify Section 4 in the Implementation portion of the Planning & Land Development Program; Page 60 in the April 29, 2008 – draft Tentative Permit. Insert the following before (c) in Alternative Post Construction Storm Water Mitigation Programs. :

The Ventura Co-Permittees will assist the Local Government Commission in the development of RPAMP evaluation criteria within 24 months of permit adoption, and submit the criteria to the Regional Board Executive Officer for approval. These criteria will recognize and encourage the water quality benefits of high-density infill and redevelopment projects. Until the evaluation criteria are approved, the Co-permittees will use the following minimum BMPs for low impact development of all redevelopment and infill projects:

- i. *Master Planned Community Scale LID:*
 - (a) *Cluster development to preserve open space.*
 - (b) *Provide riparian buffers.*
 - (c) *Locate development on least infiltrative soils.*
 - (d) *Utilize infiltration properties of sandy soils for groundwater recharge.*
- ii. *Tract Map Scale LID:*
 - (a) *Minimize impervious areas by incorporating open space and/or parks.*
 - (b) *Use vegetated or infiltration-based treatment control and/or hydromodification control BMPs.*
 - (c) *In areas not subject to mass grading, delineate and flag the smallest site disturbance area possible and restrict temporary storage of construction equipment in these areas to minimize soil compaction.*
 - (d) *Provide riparian buffers by clustering development upland and away from Natural Drainage Systems.*
 - (e) *Preserve and/or restore and enhance natural slopes and native vegetation on slopes adjacent to Natural Drainage Systems.*
- iii. *Planning Area Scale LID:*
 - (a) *Construct streets, sidewalks, and parking lot aisles to the minimum widths specified in the land use code and in compliance with regulations for the Americans with Disabilities Act and safety requirements for fire and emergency vehicle access.*
 - (b) *Use vegetated or infiltration-based treatment control and/or hydromodification control BMPs.*
 - (c) *Construct trails with open-jointed paving materials, granular materials, or other pervious materials, in compliance with regulations for the Americans with Disabilities Act and safety requirements for fire and emergency vehicle access..*

- (d) *Use native and/or non-native/non-invasive, climate-appropriate landscaping vegetation that requires less watering and chemical application.*
 - (e) *Minimize impervious surfaces in landscape design.*
 - (f) *Use efficient irrigation technologies and centralized irrigation controls for landscape watering in common areas, commercial areas, multiple family residential areas, and parks.*
- iv. *Lot Scale LID:*
- (a) *Direct runoff from sidewalks, walkways, trails, and patios into adjacent landscaping or to vegetated or infiltration-based treatment control and/or hydromodification control BMPs.*
 - (b) *Use vegetated or infiltration-based treatment control and/or hydromodification control BMPs.*
 - (c) *Do not use copper or zinc building materials for roof gutters and downspouts.*
 - (d) *Direct roof runoff through landscaped areas where site conditions allow.*
 - (e) *Use efficient irrigation technologies for landscape watering.*

Issue: Municipal Action Levels (MALs)

The City of Ventura cannot support the MALs, as written, for the following reasons:

- The Permit uses MALs as a numeric compliance metric for the technology-based standard of maximum extent practicable (MEP) rather than guidance for identifying problem areas and redirecting program efforts for maximum effectiveness.
- We agree with the State Board's Blue Ribbon Panel that stated that "*It is not feasible at this time to set enforceable numeric effluent criteria for municipal BMPs and in particular urban discharges...*"
- The numeric limits set are not consistent with local or State data;
- The City does not have jurisdiction or control of all discharges to the City's storm drain system, e.g., agriculture, State Agencies, and other municipalities, and can therefore not be held responsible for their inputs to our storm drain system; and
- The City needs flexibility to be able to improve water quality in the most cost-effective and efficient manner possible, without being tied to the MALs plus the multitude of prescriptive and administrative actions that are not effective in improving water quality.
- Implementation of the Permit, with MALs as written, is expected to raise the annual cost of the municipal stormwater program immediately to a level of \$600/household. During current economic times, the ability for agencies to comply and public support for this level of program is unlikely.

Recommendation:

Rewrite the Permit provisions to ensure that the numeric limits are set using appropriate scientific, locally applicable data and that they are used as guidance for identifying problem areas and redirecting program efforts for maximum effectiveness, not as enforcement. Combine this with performance based criteria in other program areas, as recommended by the California Association of Stormwater Agencies and in the Ventura Countywide Program materials provided to Regional Board staff, to offer reasonable flexibility with accountability.

If you have any questions, please contact Vicki Musgrove at 805-677-4133, or e-mail vmusgrove@ci.ventura.ca.us.

Sincerely,



Christy Weir
Mayor



Rick Cole
City Manager

**C: Jeff Pratt, Director, Ventura County Watershed Protection District
City Attorney; City of Ventura**

Attachment:

October 12, 2007 Correspondence; Calkins to Swamikannu - comment letter on second draft of the NPDES permit.